

## ESCROW AGREEMENT

THIS ESCROW AGREEMENT (hereinafter the "Agreement") is made and entered into as of this 1<sup>st</sup> day of May, 2014 (hereinafter the "Effective Date") by and among Lifeline Construction Services, LLC (hereinafter the "Contractor"), 401-Public Safety, LLC (hereinafter the "Landlord"), The Department of Public Safety for the City of Indianapolis, Indiana (hereinafter "DPS") and STAR Financial Bank (hereinafter the "Escrow Agent").

### RECITALS

WHEREAS, pursuant to a Lease Agreement, dated May 20, 2011 (hereinafter the "Lease" and attached hereto as "Exhibit A") between DPS and Landlord, DPS leases from Landlord certain land and improvements located at 201 N. Shadeland Avenue in Indianapolis, Indiana (hereinafter the "Property"); and

WHEREAS, pursuant to the Lease maintenance of the Property is the responsibility of DPS; and

WHEREAS, DPS desires that Contractor to perform maintenance services for the Property; and

WHEREAS, DPS and Contractor have entered into a Property Maintenance Agreement dated as of April 1, 2014 (hereinafter "Maintenance Agreement" and attached hereto as "Exhibit B") for the provision by Contractor of the maintenance services set forth therein; and

WHEREAS, it is the intent of DPS and Contractor, pursuant to the terms of the Lease and the Maintenance Agreement, to fully maintain the Property and ensure that funds to do so are safely kept, accounted for, and dedicated only for the benefit of maintaining the Property.

NOW THEREFORE, the parties hereto agree as follows:

- 1) **Appointment of an Escrow Agent.** DPS and Contractor hereby appoint and designate the Escrow Agent as the escrow agent hereunder upon the terms and conditions and for the purposes set forth herein. The Escrow Agent hereby accepts its appointment and agrees to act as Escrow Agent and to hold, invest and disburse the Escrow Funds upon the terms and conditions and for the purposes set forth in this Agreement. The Escrow Agent undertakes to perform only such duties as are expressly set forth herein.
- 2) **Establishment of an Escrow Account.**
  - a) At or within five (5) business days from the Effective Date of this Agreement, DPS, Contractor, and the Escrow Agent shall establish an escrow account at STAR Financial Bank in Indianapolis, IN for the sole purpose of maintaining the Property, in which the funds paid by DPS pursuant to the Maintenance Agreement to maintain the property shall be held, invested, and distributed

(hereinafter the "Escrow Account"). Each year, or at other regular intervals, DPS shall instruct its transfer agent to deliver to the Escrow Agent for deposit into the Escrow Account as required by the Maintenance Agreement, the funds to maintain the Property.

- b) The Escrow Agent shall be the only signatory on the Escrow Account.
- c) The Escrow Agent is hereby granted the power to affect any disbursement of funds necessary for the maintenance of the Property; provided, however, that the Escrow Agent shall distribute funds to the Contractor only upon submission by Contractor of proper documentation, with a copy to DPS via email at the time of submission, as further described herein.

**3) Maintenance of the Escrow Account.**

- a) The Contractor shall be responsible for keeping all records of maintenance performed and delivering a copy of the monthly Escrow Account bank statement to DPS and the Escrow Agent.
- b) Pending disbursement of any funds held in the Escrow Account hereunder, such funds shall be invested and reinvested only in (a) FDIC-insured certificates of deposit, in (b) a normal interest-bearing account at STAR Financial, or in (c) a daily money market mutual fund or in any combination thereof, in the discretion of the Escrow Agent.
- c) The Escrow Agent shall keep such records as are customary and necessary to provide accurate monthly statements to Contractor and DPS, and shall retain all requests and records submitted by Contractor and DPS, and otherwise created pursuant to this Agreement.

**4) Distribution of funds.** The Escrow Agent shall disburse funds to Contractor within five (5) business days of receipt of a verified request for funds that includes a description of work performed and the costs incurred in connection therewith. Contractor shall verify that cost calculations are consistent with costs parameters set forth in the Maintenance Agreement. The form of such request shall be substantially similar to the Request For Funds form attached hereto as "Exhibit C." Escrow Agent shall distribute funds solely upon receipt of the proper form submitted by Contractor and shall not be responsible for confirming or verifying the accuracy, or lack thereof, of any submission by Contractor. No pre-approval by DPS shall be required for disbursement of funds to Contractor, but DPS shall receive a copy of each submission via email at the time it is submitted by Contractor to Escrow Agent.

**5) Termination of the Escrow Account.** This Agreement, as it relates to Contractor, shall terminate upon notice to the Escrow Agent by both DPS and Contractor that the Maintenance Agreement has terminated; provided, however, that Contractor shall have



two (2) weeks from the date of notice of termination of the Maintenance Agreement to submit requests for payments for work already performed consistent with the terms herein and Escrow Agent shall disburse such funds as if this Agreement was still in effect.

**Unused Funds.** Upon notice of termination, any undispersed funds, remaining in the Escrow Account after Contractor's final funding requests, shall remain in the Escrow Account.

**Replacement of Contractor.** DPS shall have the option of (1) notifying the Escrow Agent that DPS has contracted with a substitute contractor or (2) notifying the Escrow Agent that DPS, or another City agency, will assume the maintenance of the Property. In either event, DPS or its substitute contractor shall assume the role of Contractor under this Agreement and be bound by the terms set forth herein, including those for disbursement of remaining funds.

- 6) **Fees of the Escrow Agent.** The fees of the Escrow Agent, including (a) the normal costs of administering the Escrow Account, and (b) all fees and costs associated with the Escrow Agent's administration of the Escrow Account, shall be One Thousand Dollars (\$1,000.00) per year. Such fees shall be paid from the Escrow Account on an annual basis in arrears beginning one year from the date of execution hereof. In the event that the Escrow Agent renders any service not provided for herein, the Escrow Agent shall be reasonably compensated for such extraordinary services from the Escrow Account provided that the provision of such extraordinary services are approved in advance and in writing by DPS and Contractor.
- 7) **Liability of the Escrow Agent.** Escrow Agent assumes no responsibility for and shall not be liable for any loss or damage resulting from any of the following:
  - a) The calculation of or the amount of funds requested by Contractor.
  - b) Payment or failure of DPS to pay amounts to the Escrow Account.
  - c) Failure to perform under the Lease or Maintenance Agreement by DPS, Landlord or Contractor.
  - d) Any income or other tax relating to funds in the Escrow Account.
  - e) The identity of parties or the sufficiency of any agency or the authenticity of any written and signed notice or request for funds purporting to have been written by the proper party and believed by Escrow Agent to be genuine.
  - f) Any error of judgment or for any act done or omitted by Escrow Agent in good faith and for anything which Escrow Agent in good faith does or refrains from doing in connection therewith, provided that Escrow Agent acted in a commercially reasonable manner.

- g) Acting on any document believed by Escrow Agent to be genuine and signed by the proper party or parties.
  - h) The legal effect or desirability of any instrument exchanged by any parties or deposited by the parties, including interpretation of this Escrow Agreement.
  - i) Rates of return upon the funds deposited pursuant to this Escrow Agreement unless noted specifically above.
- 8) **Indemnification of Escrow Agent.** The parties hereto jointly and severally promise to save Escrow Agent harmless for all damages or losses resulting from a dispute over the terms of this Agreement, termination of this Agreement, dispute over payment or any actions on the part of Escrow Agent acting in good faith and further agree, jointly and severally, to defend Escrow Agent from all liability, claim or charge asserted against it as a result of acts or omissions and from any and all amounts Escrow Agent may be required to pay on account of such, including, but not limited to, acts, expenses, damages and attorney fees.
- 9) **Controversies.** If any controversy arises between the parties to this Agreement, or with any other party, concerning the subject matter of the Property Maintenance Agreement, its terms or conditions, the Escrow Agent will not be required to determine the controversy or to take any action regarding it. The Escrow Agent may hold all documents and funds and may wait for settlement of any such controversy by final appropriate legal proceedings or other means as, in the Escrow Agent's discretion, it may require, despite what may be set forth elsewhere in this Agreement. In such event, the Escrow Agent will not be liable for interest or damage. Furthermore, the Escrow Agent may at its option, file an action of interpleader requiring the parties to answer and litigate any claims and rights among themselves. The Escrow Agent is authorized to deposit with the clerk of the court the Escrow Account and all documents and certificates related thereto, attributable to costs, expenses, charges and reasonable attorneys' fees incurred by it due to the interpleader action and which the parties jointly and severally agree to pay. Upon initiating such action, the Escrow Agent shall be fully released and discharged of and from all obligations and liability imposed by the terms of the escrow, and the action will be deemed to be solely a dispute between the parties subject to the Maintenance Agreement.
- 10) **Resignation of Escrow Agent.** The Escrow Agent may resign at any time upon giving at least thirty (30) days written notice to the other parties; provided, however, that no such resignation shall become effective until the appointment of a successor Escrow Agent which shall be accomplished as follows: DPS and Contractor shall use their best efforts to agree on a successor Escrow Agent within thirty (30) days after receiving such notice, provided that the successor so chosen shall be an attorney, financial institution, or CPA in good standing. If the parties fail to agree on a successor Escrow Agent within



such time, then the Escrow Agent shall have the right to appoint a successor Escrow Agent. The successor Escrow Agent shall execute and deliver to the Escrow Agent an instrument accepting such appointment, and the successor Escrow Agent shall, without further acts, be vested with all the estates, property rights, powers and duties of the predecessor Escrow Agent as if originally named as Escrow Agent herein. The predecessor Escrow Agent then shall deliver the Escrow Account then held by it to the successor Escrow Agent and shall thereafter be discharged from any further duties and liability under this Agreement.

**11) Miscellaneous.**

- a) *Assignment; Binding Upon Successors and Assigns.* None of the parties hereto may assign any of its rights or obligations hereunder without the prior written consent of the other parties, which shall not be unreasonably withheld.
- b) *Severability.* If any provision of this Agreement, or the application thereof, shall for any reason and to any extent be held to be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall be interpreted so as best to reasonably effect the intent of the parties hereto. The parties further agree to replace such invalid or unenforceable provision of this Agreement with a valid and enforceable provision which will achieve, to the extent possible, the economic, business and other purposes of the invalid or unenforceable provision.
- c) *Entire Agreement.* This Agreement, the Lease and the Maintenance Agreement constitute the entire understanding and agreement of the parties hereto with respect to the subject matter hereof and thereof and supersede all prior and contemporaneous agreements or understandings, inducements or conditions, express or implied, written or oral, between the parties with respect hereto and thereto. The express terms hereof control and supersede any course of performance or usage of the trade inconsistent with any of the terms hereof.
- d) *Notices.* All notices, requests, demands, claims, and other communications hereunder shall be in writing. Any notice, request, demand, claim, or other communication hereunder shall be deemed duly given (i) when delivered personally to the recipient, (ii) one (1) business day after being sent to the recipient by reputable overnight courier service (charges prepaid), (iii) one (1) business day after being sent to the recipient by facsimile transmission or electronic mail, or (iv) four (4) business days after being mailed to the recipient by certified or registered mail, return receipt requested and postage prepaid, and addressed to the intended recipient as set forth below:

If to Contractor:

Alex J Carroll  
Lifeline Construction Services, LLC  
PO Box 887  
Carmel, Indiana 46082  
Email address: acarroll@lifelinedatacenters.com

If to DPS:

Attn: Deputy Chief of Administration  
IMPD Administrative Division  
Department of Public Safety  
200 East Washington Street, Suite E220  
Indianapolis, IN 46204  
Email address: \_\_\_\_\_

If to Escrow Agent:

STAR Financial Bank  
Attention:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Email address: \_\_\_\_\_

Any Party may change the address to which notices, requests, demands, claims, and other communications hereunder are to be delivered by giving the other Party notice in the manner herein set forth.

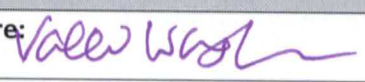

- e) *Other Remedies.* Except as otherwise provided herein, any and all remedies herein expressly conferred upon a party shall be deemed cumulative with and not exclusive of any other remedy conferred hereby or by law on such party, and the exercise of any one remedy shall not preclude the exercise of any other.
- f) *Amendment and Waivers.* Any term or provision of this Agreement may be amended, and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) only by a writing signed by the parties hereto and only with the mutual consent of all parties, which consent shall not be unreasonably withheld. The waiver by a party of any breach hereof for default in payment of any amount

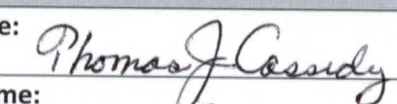
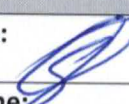
due hereunder or default in the performance hereof shall not be deemed to constitute a waiver of any other default or any succeeding breach or default.

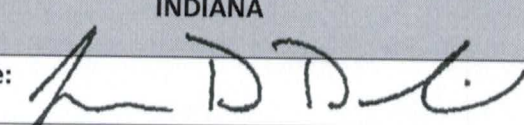
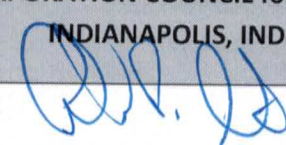
- g) *Further Assurances.* Each party agrees to cooperate fully with the other parties and to execute such further instruments, documents and agreements and to give such further written assurances, as may be reasonably requested by any other party to better evidence and reflect the transactions described herein and contemplated hereby and to carry into effect the intents and purposes of this Agreement.
- h) *Absence of Third Party Beneficiary Rights.* No provisions of this Agreement are intended, nor shall be interpreted, to provide or create any third party beneficiary rights or any other rights of any kind in any subcontractor, client, customer, affiliate, shareholder, partner of any party hereto or any other person or entity unless specifically provided otherwise herein, and, except as so provided, all provisions hereof shall be solely between the parties to this Agreement.
- i) *Headings.* The section headings contained in this Escrow Agreement are for reference purposes only and are to be given no effect in the construction or interpretation of this Escrow Agreement.
- j) *Governing Law.* It is the intention of the parties hereto that the internal laws of the State of Indiana, County of Marion (irrespective of its choice of law principles) shall govern the validity of this agreement, the construction of its terms, and the interpretation and enforcement of the rights and duties of the parties hereto.
- k) *Tax Reporting Information.* The parties hereto agree that, for tax reporting purposes, all interest on or other income, if any, attributable to the Escrow Account or any other amount held in escrow by the Escrow Agent pursuant to this Agreement shall be allocable to the Landlord and shall continue to accumulate in the Escrow Account for the benefit of maintaining the Property.



IN WITNESS WHEREOF, authorized representatives of the [parties hereto have read the foregoing and all Exhibits incorporated therein and agree and accept such terms as of the Effective Date.

THE DEPARTMENT FOR PUBLIC SAFETY for the CITY OF INDIANAPOLIS, INDIANA	LIFELINE CONSTRUCTION SERVICES, LLC
Signature: 	Signature: 
Print Name: Valerie Washington	Print Name: Alex J. Carroll
Title: Deputy Director / CPO	Title: Managing Member
Date: 6/24/14	Date: 6/11/2014

ESCROW AGENT	401-PUBLIC SAFETY, LLC
Signature: 	Signature: 
Print Name: Thomas J. Cassidy	Print Name: Alex J. Carroll
Title: Senior Vice President & Senior Trust Officer	Title: Managing Member
Date: 7/11/14	Date: 6/11/2014

CONTROLLER for the CITY OF INDIANAPOLIS, INDIANA	CORPORATION COUNCIL for the CITY OF INDIANAPOLIS, INDIANA
Signature: 	Signature: 
Print Name: Jason Dudich	Print Name: Andrew P. Seiwert
Title: Controller	Title: Corporation Counsel
Date: 7/3/14	Date: 6-12-14

DEC

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